THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 18400 of 2005

MONDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

Between:

Vijaya Pissay S/o. Sri P. Panduranga Rao
R/o. 3-1-473, Nimboliadda Kachiguda
Hyderabad.

..... PETITIONER

AND

1 Central Power Distribution Company of A.P Ltd., Rep. by its Chairman Hyderabad ERO Vidyut Soudha, Hyderabad.
2 Divisions Engineer (Assessment) 1/APCPDCLA/AP State Housing Corp. Building, 4th Floor, Street.No.17, Urdu Hall Galli Himayathnagar, Hyderabad.
3 Asst. Divisional Engineer Engineer (Assessment) Distribution VII City II, APCPDC Ltd., Azamabad Hyderabad.

.....RESPONDENTS

The Court, at the stage of admission, made the following:

Oral order:-

The petitioner assails the provisional assessment notice dated 12-02-2205 of the 3rd respondent and the final assessment order dated 03-03-2005 issued by the 2nd respondent whereby the person in whose favour the service connection is issued, has been found un-authorisedly using a domestic service connection for non-domestic purposes. It was concluded that there was mis-use/mal practice and the consumer was called upon to pay a sum of Rs.13,928-00 plus Rs.150-00 less the amount, if any, paid in this regard within thirty (30) days from the date of receipt of the order (final assessment order dated 03-03-2005), failing which, supply to the premises bearing service connection No.H3007862 of the consumer – Vidyasagar Chava -- would be disconnected without further notice. The order also intimated that an appeal against the order is available to the Superintending Engineer (Assessment), APCPDCL, Himayat Nagar, Hyderabad. The petitioner is not the consumer in whose favour the service is issued. The service connection was issued in favour of one Vidyasagar Chava, a previous owner of the building. The petitioner claims to be the present occupant of the premises. By the provisional assessment notice dated 12-02-2005 issued to Vidyasagar Chava, the consumer, was intimated of the malpractice and called upon to pay the provisional assessment. The petitioner being the present occupant of the premises responded to the provisional assessment notice and submitted his explanation. Thereafter, the final order was passed by the 2nd respondent on 03-03-2005.

According to the petitioner, the power supply is being used for running an advocate's office, which is not a commercial purpose nor a non-domestic purpose and, therefore, the very conceptual foundation for the conclusion of malpractice is misconceived. However, the issue whether the use of electricity supply for an advocate's office constitutes a domestic purpose or a commercial purpose is a matter more appropriately decided by the quasi-judicial and appellate authority prior to being considered in judicial review.

The final assessment, though made under the previous terms and conditions of supply between the respondents-Corporation and the consumer, which are the terms and conditions made under the provisions of the earlier Act i.e., Indian Electricity Act, 1948, it is contended by Mr. M. Sriramulu Reddy, learned standing counsel for the respondents that these terms and conditions are still operative under the provisions of the Electricity Act, 2003 having regard to the savings of such terms and conditions under Section 185 of the 2003 Act, in particular, since no new rules have been made under the 2003 Act. Therefore, though the provisional assessment and final orders have been issued under the terms and conditions, learned standing counsel contends, these orders are not in antinomy with the provisions of Section 126 and 127 of the 2003 Act. On this platform, it is contended by the learned standing counsel for the respondents that the appeal to the Superintending Engineer, under the terms and conditions of supply, is saved by the provisions of Section 127 as well. In any event, contends the learned standing counsel, the Superintending Engineer concerned without demur would entertain an appeal preferred by the petitioner without questioning whether he has the appellate jurisdiction or not. On the basis of this undertaking by the learned standing counsel for the respondents, this court does not consider it appropriate to go into the question, at this stage, whether the terms and conditions of supply between the respondents-Corporation and the consumer, including the petitioner, as the present occupant, hold good even after the enactment of Indian Electricity Act, 2003. There is a consensus as to the applicability of the terms and conditions of supply between the parties. Neither of the parties have addressed this legal aspect.

Accordingly, the writ petition is disposed of granting liberty to the petitioner to prefer an appeal to the Superintending Engineer as intimated to the petitioner in

the final order dated 03-03-2005. The petitioner may prefer the appeal within two weeks from today and on such appeal being preferred, the concerned Superintending Engineer shall dispose of the appeal expeditiously and in any event within a period of three (3) weeks from the date of preferring the appeal by the petitioner. Nothing in this order shall be construed as an expression by this court on the merits of the petitioner's contention that use of electricity supply for an advocate's office constitutes a domestic use and not a non-domestic or commercial use. This aspect of the matter shall have to be decided by the appellate authority after duly considering any submissions that the petitioner wishes to make and any contra submissions that the respondents-Corporation may submit. No costs.

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GODA RAGHURAM, J

Dt. 22-08-2005

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